

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

WILLIAM D. BARNES,	:	APPEAL NO. C-090030
	:	TRIAL NO. SP-0700040
Petitioner-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
STATE OF OHIO,	:	
	:	
Respondent-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In 2002 in Alaska, petitioner-appellant William D. Barnes pleaded guilty to and was convicted of sexual abuse of a minor in the third degree. When Barnes moved to Ohio in 2003, he was designated a sexually-oriented offender. Under former R.C. Chapter 2950, Barnes was required to annually register as a sexual offender for ten years.

In 2007, the General Assembly enacted Am.Sub.S.B. No. 10 (“Senate Bill 10”) to implement the federal Adam Walsh Child Protection and Safety Act of 2006. Barnes received a notice from the Ohio Attorney General stating that he had been reclassified under Senate Bill 10 as a Tier II sex offender and that he was required to register with the local sheriff every 180 days for 25 years. Barnes filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. After a

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

hearing, the trial court overruled Barnes's constitutional challenges to Senate Bill 10. But the parties agreed that Barnes had been incorrectly classified as a Tier II offender. The trial court found that Barnes's correct classification was a Tier I offender. As a Tier I offender, Barnes is required to register annually for 15 years.

Barnes's first assignment of error, which alleges that the retroactive application of Senate Bill 10's tier-classification and registration requirements violates the constitutional ban on ex post facto laws, is overruled.

"The Ex Post Facto Clause applies only to criminal statutes."² We held in *Sewell v. State*³ that the tier-classification and registration provisions of Senate Bill 10 are remedial and not punitive, and that they do not have the effect of converting a remedial statute into a punitive one. Because Senate Bill 10's classification and registration provisions are civil and remedial, not criminal, they do not violate the constitutional ban on ex post facto laws.

Barnes's second, third, and fourth assignments of error are overruled because the retroactive application of Senate Bill 10's tier-classification and registration requirements does not violate the prohibition on retroactive laws contained in Section 28, Article II of the Ohio Constitution, the Double Jeopardy Clause of the Ohio Constitution, or the separation-of-powers doctrine.⁴ Barnes's arguments under the United States Constitution are also overruled on *Sewell's* reasoning.

Barnes's fifth assignment of error is overruled. Barnes has no standing to challenge Senate Bill 10's residency restriction because he has not shown that he lives in or owns property within the restricted area or that he has been forced to move outside

² See *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570, citing *California Dept. of Corrections v. Morales* (1995), 514 U.S. 499, 504, 115 S.Ct. 1597, and *Collins v. Youngblood* (1990), 497 U.S. 37, 43, 110 S.Ct. 2715.

³ 181 Ohio App.3d 280, 2009-Ohio-872, 908 N.E.2d 995.

⁴ Id.

the restricted area.⁵ We note that the Ohio Supreme Court held in *Hyle v. Porter*⁶ that because the residency restriction in former R.C. 2950.031 was not expressly made retrospective, it could not be applied to an offender who had bought his home and committed his offense before the effective date of the statute.

Barnes's sixth and seventh assignments of error, which allege that reclassifying him under Senate Bill 10 constituted a breach of his plea agreement and an impairment of an obligation of contract, in violation of Section 28, Article II of the Ohio Constitution and Clause I, Section 10, Article I of the United States Constitution, are overruled.⁷ The retroactive application of Senate Bill 10's tier-classification and registration requirements to a sex offender who pleaded guilty to a sexually-oriented offense pursuant to a plea bargain does not violate the Contract Clause of the Ohio and United States Constitutions, because when the offender entered his plea he had no reasonable expectation that his sex offense would never be made the subject of future legislation and no vested right concerning his registration duties.⁸ Senate Bill 10's tier-classification and registration requirements are remedial, collateral consequences of the underlying criminal sex offense, and they do not affect a plea agreement previously entered between the state and the offender.⁹

The eighth assignment of error, alleging that the retroactive application of Senate Bill 10's registration requirements constitutes cruel and unusual punishment, is

⁵ See *State v. Randlett*, 4th Dist. No. 08CA3046, 2009-Ohio-112; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; *State v. Duncan*, 3rd Dist. No. 7-08-03, 2008-Ohio-5830.

⁶ 117 Ohio St.3d 165, 2008-Ohio-542, 882 N.E.2d 899.

⁷ Judge Mallory agrees that the sixth and seventh assignments of error are without merit not for the reasons given in the body of this judgment entry, but for the reasons set forth in his separate concurrence in *Nixon v. State*, 1st Dist. No. C-090219, 2010-Ohio-767.

⁸ See *White v. State*, 1st Dist. No. C-090177, 2010-Ohio-234; *Burbrink v. State*, 1st Dist. No. C-081075, 2009-Ohio-5346.

⁹ See *id.*

overruled because the statutes are civil and remedial, not punitive.¹⁰ Therefore, the registration requirements cannot be viewed as punishment.¹¹

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 28, 2010
per order of the Court _____.
Presiding Judge

¹⁰ See *Sewell v. State*, supra, at fn. 3.

¹¹ See id.; *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195; *State v. Byers*, 7th Dist. No. 07 CO 39, 2008-Ohio-5051.